



General Assembly

February Session, 2004

Amendment

LCO No. 3163

HB0524503163HDO

Offered by:
REP. O'BRIEN, 24th Dist.

To: House Bill No. 5245

File No. 581

Cal. No. 394

**"AN ACT CONCERNING THE RESEARCH AND DEVELOPMENT
TAX CREDIT EXCHANGE."**

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. (NEW) (*Effective from passage and applicable to income years*
4 *commencing on or after January 1, 2004*) (a) Notwithstanding a taxpayer's
5 election to file a combined return under subsection (a) of section 12-
6 223a of the general statutes or the filing of a separate return by a
7 taxpayer under chapter 208 of the general statutes, every taxpayer that
8 has one or more of the factors listed in subsection (b) of this section
9 with an affiliated corporation or a related entity during the taxpayer's
10 income year shall file an alternate combined report with one or more
11 affiliated corporations, as required by subsection (c) of this section, and
12 compute their aggregate net income or loss, as required by subsection
13 (d) of this section, apportioning their aggregate net income or loss, as
14 required by subsection (e) of this section, and paying the tax due, as
15 required by subsection (f) of this section.

16 (b) An alternate combined report shall be filed whether or not an
17 "arm's length charge", within the meaning of United States Treasury
18 Regulation Section 1.482-2(b)(3), for any of the following factors is
19 established and whether or not a valid business purpose can be
20 established for the arrangement. The existence of one or more of the
21 following factors requires the filing of the alternate combined report:

22 (1) Fifty per cent or more of the taxpayer's gross income is derived
23 from transacting or conducting any business with one or more
24 affiliated corporations or related entities or fifty per cent or more of the
25 gross income of any one affiliated corporation or related entity is
26 derived from transacting or conducting any business with the taxpayer
27 or with the taxpayer and one or more affiliated corporations or related
28 entities.

29 (2) Three or more of the following services are provided between
30 the taxpayer and one or more affiliated corporations or related entities:
31 Advertising services; public relations services; accounting and
32 bookkeeping services; centralized cash management services;
33 distribution services; legal services; personnel services; manufacturing
34 services; sales services; purchasing services; research and development
35 services; management services; collection services; insurance
36 procurement and servicing, exclusive of employee benefit programs;
37 and employee benefit programs including pension, profit-sharing and
38 stock purchase plans.

39 (3) Twenty per cent or more of the debt of the taxpayer is owed to
40 one or more affiliated corporations or related entities, or twenty per
41 cent or more of the debt owed to the taxpayer is owed by one or more
42 affiliated corporations or related entities.

43 (4) The taxpayer transfers, sells or exchanges income-producing
44 property other than cash that serves an operational function, including
45 real property, accounts receivable, securities, patents, trademarks,
46 copyrights or other like property, to an affiliated corporation or related
47 entity, and subsequently the taxpayer, either directly or indirectly,

48 receives income or moneys attributable to such income-producing
49 property.

50 (c) In the case of a taxpayer filing a separate return, the alternate
51 combined report that is required under this section shall include the
52 taxpayer and all affiliated corporations. Any taxpayer that has elected
53 to file a combined return under subsection (a) of section 12-223a of the
54 general statutes shall file an alternate combined report that includes
55 the taxpayer, all taxpayers that are required to be included in the
56 combined return under subsection (a) of section 12-223a of the general
57 statutes and all other affiliated corporations. When a corporation in the
58 affiliated group has an interest in a related entity and that related
59 entity satisfies one or more of the factors enumerated in subsection (b)
60 of this section, such corporation shall be treated as an affiliated
61 corporation and must be included in the alternate combined report.

62 (d) All corporations included in the alternate combined report shall
63 compute an aggregate net income or loss, by treating such
64 corporations as if they were one corporation, and by eliminating
65 intercorporate dividends. The corporations that are included in the
66 alternate combined report shall not be subject to the provisions of
67 section 12-218c of the general statutes. The commissioner shall
68 establish by regulation, adopted in accordance with the provisions of
69 chapter 54 of the general statutes, the manner in which tax credits, net
70 operating losses and net operating loss carryovers shall apply in the
71 alternate combined report.

72 (e) The corporations that are included in the alternate combined
73 report shall apportion their aggregate net income or loss to this state
74 by treating all included corporations as if they were one corporation
75 and the provisions of section 12-223b of the general statutes shall
76 apply. The commissioner shall establish by regulation, adopted in
77 accordance with the provisions of chapter 54 of the general statutes,
78 the method by which the combined apportionment shall be computed
79 when the apportionment methodology of the included corporations is
80 not the same.

81 (f) (1) If the alternate combined tax computed under this section
82 exceeds the tax computed under subdivision (1) of subsection (c) of
83 section 12-223a of the general statutes, as amended by this act, the
84 taxpayer and all affiliated corporations shall pay the tax computed
85 under this section. All taxpayers included in the alternate combined
86 report shall be jointly and severally liable for the tax computed under
87 this subdivision.

88 (2) In the case of a taxpayer filing a separate return under chapter
89 208 of the general statutes, if the alternate combined tax computed
90 under this section exceeds the tax computed on the separate return, the
91 taxpayer shall pay the tax computed under this section.

92 (g) If the corporations subject to the alternate combined tax
93 calculated under this section determine that such tax unfairly
94 attributes an undue proportion of their total income or minimum tax
95 base to this state, said corporations may submit a petition in writing to
96 the Commissioner of Revenue Services for approval of an alternate
97 method of determining the combined measure of their tax under this
98 section not later than sixty days prior to the due date of the return to
99 which the petition applies, determined with regard to any extension of
100 time for filing such return. The Commissioner of Revenue Services
101 shall consider approval of the petition only in the event that the
102 petitioners have clearly established to the satisfaction of said
103 commissioner that all the corporations included in such combined
104 return are, in substance, parts of a unitary business engaged in a single
105 business enterprise, that there are substantial intercorporate business
106 transactions among such included corporations and that the proposed
107 alternate method of apportionment accurately reflects the activity,
108 business, income or capital of the taxpayers within the state.

109 (h) (1) If any member of the affiliated group or any related entity
110 does not have any of the factors set forth in subsection (b) of this
111 section and the commissioner determines that such corporation must
112 be included in the alternate combined report in order to accurately
113 reflect the activity, business, income or capital of the taxpayer within

114 this state, the commissioner is authorized and empowered, in his or
115 her discretion, provided such discretion is not arbitrarily, capriciously,
116 or unreasonably exercised, to require such affiliated corporation to be
117 included in the alternate combined report.

118 (2) If the commissioner determines that any affiliated corporation
119 required to be included in the alternate combined report pursuant to
120 subsection (c) of this section should be excluded from the alternate
121 combined report in order to accurately reflect the activity, business,
122 income or capital of the taxpayer within this state, the commissioner is
123 authorized and empowered, in his or her discretion, provided such
124 discretion is not arbitrarily, capriciously, or unreasonably exercised, to
125 exclude such affiliated corporation from the alternate combined report.

126 (i) As used in this section:

127 (1) "Affiliated corporation" means any corporation that is a member
128 of an affiliated group that either by itself or in conjunction with any
129 other affiliated corporations meets any of the factors in subsection (b)
130 of this section with a taxpayer, but does not include a passive
131 investment company, as defined in section 12-213 of the general
132 statutes. Limited liability companies that elect to be taxed as a
133 corporation for federal income tax purposes may be affiliated
134 corporations for purposes of this subdivision;

135 (2) "Affiliated group" means one or more chains of corporations that
136 are connected through stock ownership with a common parent
137 corporation if: (A) Stock possessing more than fifty per cent of the
138 voting power of all classes of stock and more than fifty per cent of each
139 class of the nonvoting stock of each of the corporations, except the
140 common parent corporation, is owned directly by one or more of the
141 other corporations; and (B) the common parent corporation owns
142 directly stock possessing more than fifty per cent of the voting power
143 of all classes of stock and more than fifty per cent of each class of the
144 nonvoting stock of at least one of the other corporations. As used in
145 this subsection, "stock" does not include nonvoting stock which is

146 limited and preferred as to dividends; employer securities, as used in
147 Section 409A of the Internal Revenue Code, while such securities are
148 held under a tax credit employee stock ownership plan; or qualifying
149 employer securities, as used in Section 4975(e)(8) of the Internal
150 Revenue Code, while such securities are held under an employee stock
151 ownership plan which meets the requirements of Section 4975(e)(7) of
152 the Internal Revenue Code;

153 (3) "Related entity" means any partnership, limited liability
154 company, S corporation, REIT or other pass-through entity, if the
155 taxpayer or one or more affiliated corporations, or both the taxpayer
156 and one or more affiliated corporations, own directly or indirectly,
157 beneficially or constructively, in the aggregate, at least fifty per cent of
158 the interest in such partnership, limited liability company, S
159 corporation, REIT or other pass-through entity; and

160 (4) "Taxpayer" means any corporation that is subject to tax under
161 chapter 208 of the general statutes.

162 Sec. 502. (*Effective from passage and applicable to income years*
163 *commencing on or after January 1, 2004*) Section 81 of public act 03-6 of
164 the June 30 special session is repealed."